

JOLLEY URGA WIRTH WOODBURY & STANDISH
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GMAC, LLC,) Case No. 3:08-cv-00662-LRH-VPC
vs.)
Plaintiff,)
vs.)
MARY LOU BOSCH; SUSAN R. BOSCH,)
HERBERT L. BOSCH, JR., individually and as)
Trustee of the Bosch Family Trust Dated December)
16, 1994; LEE A. BOSCH, individually and as)
Successor Trustee of the Bosch Family Trust)
Dated December 16, 1994; THE BOSCH FAMILY)
TRUST Dated December 16, 1994,)
Defendants.)

**STIPULATION AND ORDER FOR EXTENSION OF TIME
TO RESPOND TO DEFENDANTS' MOTION TO DISMISS**

(First Extension)

Plaintiff GMAC, LLC (“GMAC”), by and through its attorneys, Jolley Urga Wirth Woodbury & Standish, and Herbert L. Bosch, Jr., individually and as Trustee of the Bosch Family Trust Dated December 16, 1994, Lee A. Bosch, individually and as Successor Trustee of the Bosch Family Trust Dated December 16, 1994, and the Bosch Family Trust Dated December 16, 1994 (collectively referred to hereinafter as “Defendants”), by and through their attorneys, Hoffman, Test, Guinan & Collier, hereby stipulate and agree as follows:

1. Defendants filed their Motion to Dismiss Complaint on January 20, 2009.

1 2. As set forth in GMAC's Complaint, on October 23, 2008, Bosch Motors, Inc.
 2 ("Bosch Motors") filed a Voluntary Petition under Chapter 11 of Title 11 of the United States
 3 Code, Case No. BK-08-52022-GWZ (the "Bankruptcy Proceeding").

4 3. GMAC is a secured creditor in the Bankruptcy Proceeding.

5 4. After the Bankruptcy Proceeding was filed, GMAC filed the complaint in this action
 6 against Defendants asserting that Defendants are guarantors of certain obligations owing by Bosch
 7 Motors to GMAC.

8 5. After the complaint was filed in this action, GMAC and Bosch Motors entered into
 9 negotiations to resolve motions for relief from stay filed by GMAC in the Bankruptcy Proceeding
 10 and a motion for authority to use cash collateral filed by Bosch Motors in the Bankruptcy
 11 Proceeding.

12 6. After negotiations, GMAC and Bosch Motors agreed upon a Stipulated Interim
 13 Order re Use of Cash Collateral and Granting of Replacement Lien; and re Motion for Relief from
 14 Automatic Stay and Second Motion for Relief from Automatic Stay in the Bankruptcy Proceeding
 15 (the "Stipulated Order"). A true and correct copy of the Stipulated Order is attached hereto as
 16 Exhibit 1.

17 7. The Stipulated Order provides that GMAC will stay its claims in this proceeding
 18 while certain Bosch Motors assets are liquidated in the Bankruptcy Proceeding. The Stipulated
 19 Order states in pertinent part at Paragraph 22:

20 Notwithstanding the foregoing, so long as there is no Event of
 21 Default, GMAC shall not take any action against the non-debtor
 22 guarantors or non-debtor borrowers under the Loan and Security
 23 Agreements and Wholesale Plan to enforce or collect any amounts
 24 due under such documents, and shall stay any further action in that
 25 case entitled GMAC v. Mary Lou Bosch, et al., Case No. 08-00662
 26 pending in the United States District Court for the District of
 27 Nevada ("Litigation"). Upon any uncured Event of Default, as
 28 provided in Paragraphs 16 and 17 above, GMAC may without
 further advance notice pursue all of its rights and remedies as to any
 non-debtor guarantors and non-debtor borrowers, including those in
 the Litigation. (Emphasis added.)

2 8. The purpose of the Stipulated Order in the bankruptcy proceeding is to allow Bosch
 2 Motors to liquidate certain collateral and to apply the proceeds of such collateral to GMAC's claim

1 in the Bankruptcy Proceeding. The liquidation process will take approximately 60 days. At the
 2 end of the 60-day period, GMAC and Bosch Motors will reassess the results of the liquidation in
 3 order to determine the status of GMAC's claim in the bankruptcy proceeding.

4 9. The purpose of the liquidation is to reduce GMAC's claim, which reduction may
 5 ultimately result in a dismissal of GMAC's claims against Defendants in this action. Further, a
 6 stay of this proceeding for 75 days will allow Defendant Lee Bosch, a principal in Bosch Motors,
 7 to concentrate his time and efforts on the resolution of the Bankruptcy Proceeding.

8 10. Based upon the foregoing, the parties assert that good cause exists to extend the
 9 time for GMAC to respond to Defendants' Motion to Dismiss.

10 11. This is the first request for extension of time in this proceeding.

11 NOW THEREFORE, IT IS HEREBY STIPULATED, by and between the parties hereto,
 12 through their respective counsel, that Defendants and GMAC agree to enlarge and otherwise extend
 13 the time permitted for GMAC to file its Opposition to Defendants' Motion to Dismiss.

14 IT IS FURTHER STIPULATED that GMAC will have until April 22, 2009, to file its
 15 Response to Defendants' Motion to Dismiss.

16 HOFFMAN, TEST, GUINAN
 17 & COLLIER

JOLLEY URGA WIRTH WOODBURY
 & STANDISH

18 By: /s/ John A. Collier, Esq.
 19 John A. Collier, Esq.
 20 429 West Plumb Lane
 P.O. Box 187
 21 Reno, Nevada 89504
 Attorneys for Defendants

By: 
 22 Brian E. Holthus, Esq.
 23 3800 Howard Hughes Pkwy., #1600
 24 Las Vegas, Nevada 89169
 25 Attorneys for Plaintiff

26 Dated: 2/5/09

27 Dated: 2-5-9

1 Case No. 3:08-cv-00662-LRH-VPC
2

3 **ORDER**
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5 Based upon the above stipulation of the parties, and good cause appearing, and there being
6 no just reason for delay:
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8 IT IS HEREBY ORDERED that GMAC shall have until April 22, 2009, to file a response
9 to Defendants' Motion to Dismiss Complaint.
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11 DATED this 9th day of February, 2009.
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14 LARRY R. HICKS
15 UNITED STATES DISTRICT JUDGE
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EXHIBIT 1

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7 STEPHEN HARRIS, ESQ.
8 BELDING, HARRIS & PETRONI LTD.
9 Nevada Bar No. 001463
10 CHRIS D. NICHOLS, ESQ.
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16 Attorneys for Debtor

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In Re:

BOSCH MOTORS, INC.,
a Nevada corporation,
Debtor.

Case No. BK-08-52022-GWZ
Chapter 11

**STIPULATED INTERIM ORDER RE
USE OF CASH COLLATERAL AND
GRANTING OF REPLACEMENT LIEN;
AND RE MOTION FOR RELIEF FROM
AUTOMATIC STAY AND SECOND
MOTION FOR RELIEF FROM
AUTOMATIC STAY**

Hearing Date: 2/2/09
Hearing Time: 2:00 p.m.

Debtor Bosch Motors, Inc.'s ("Debtor") Motion for Authority to Use Cash
Collateral and Secured Creditor General Motors Acceptance Corporation's Motion for
Relief from Automatic Stay and Second Motion for Relief from Automatic Stay came

1 before the Court on February 2, 2009, at 2:00 p.m., after having been duly noticed for
 2 hearing to all creditors and interested parties. Debtor was represented by Chris D.
 3 Nichols, Esq. of Belding Harris & Petroni, Ltd. Secured Creditor General Motors
 4 Acceptance Corporation ("GMAC") was represented by Brian E. Holthus, Esq. of Jolley
 5 Urga Wirth Woodbury & Standish. Other appearances were noted on the record.
 6

7 The Court, having considered Debtor's Motion for Authority to Use Cash
 8 Collateral, GMAC's opposition thereto, and GMAC's Motions for Relief from Automatic
 9 Stay, Debtor's oppositions thereto, the representations of the parties at the hearing, and
 10 finding that the Motions were properly noticed, and good cause appearing, it is hereby
 11 ordered as follows:

13 **RECITALS**

14 A. Petition. On October 23, 2008 (the "Petition Date"), the Debtor
 15 commenced the above-captioned Chapter 11 bankruptcy case by filing a voluntary
 16 petition with the United States Bankruptcy Court for the District of Nevada. The Debtor
 17 is continuing in possession of its property, and operating and managing its business, as
 18 debtor-in-possession pursuant to Bankruptcy Code sections 1107 and 1108. No
 19 Trustee or Examiner or Creditors' Committee has been appointed.

20 B. Jurisdiction. This Court has jurisdiction over this Chapter 11 case, and the
 21 parties and property affected hereby, pursuant to 28 U.S.C. §§ 157(b) and 1334. This
 22 proceeding constitutes a core proceeding as defined in 28 U.S.C. §157(b)(2). Venue of
 23 this bankruptcy case is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

24 C. Debtor. Debtor operates an automobile dealership with related service
 25 and parts department.

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 2 D. GMAC's Claim. As of the Petition Date, the Debtor was indebted to
 3 GMAC in the approximate amount of \$4,968,472.00 the ("Prepetition Indebtedness").
 4 The Prepetition Indebtedness includes various loan, financing and security agreements
 5 with the Debtor, or related principals and entities of the Debtor in which Debtor
 6 guaranteed the obligations of the Debtor's principals and related entities and liabilities.
 7 The various loan and financing transactions are summarized (but are not limited) as
 8 follows:
 9

10 a. On June 15, 1990, GMAC and Debtor entered into a Wholesale
 11 Security Agreement. Under the Wholesale Security Agreement,
 12 Debtor agreed to upon demand pay GMAC the amount it advances
 13 or is obligated to advance to the manufacturer or distributor for
 14 each vehicle with interest at the rate per annum designated by
 15 GMAC from time to time with respect to Debtor's vehicle inventory.
 16 Debtor's obligations under the June 15, 1990 Wholesale Security
 17 Agreement were personally guaranteed by Mary Lou Bosch and
 18 Herbert L. Bosch pursuant to a personal guaranty dated June 13,
 19 1990.
 20
 21 b. On October 16, 1992, GMAC and Debtor entered into an
 22 Amendment to Wholesale Agreement.
 23
 24 c. On June 17, 1992, GMAC and Debtor entered into a Wholesale
 25 Security Agreement.
 26
 27 d. On June 17, 1993, GMAC and Debtor entered into an Amendment
 28 to Wholesale Security Agreement.

- 2 e. On April 6, 1994, Debtor entered into a Security Agreement in favor
- 3 of GMAC, granting GMAC a security interest in all of Debtor's
- 4 inventory.
- 5 f. On September 9, 1994, Debtor executed a First Amendment to
- 6 Wholesale Security Agreement in favor of GMAC.
- 7 g. On November 4, 1994, GMAC and Debtor entered into an
- 8 Amendment to Wholesale Security Agreement.
- 9 h. On June 6, 1997, GMAC and Debtor entered into an Amendment to
- 10 Wholesale Security Agreement.
- 11 i. On December 14, 2000, GMAC and Debtor entered into a General
- 12 Security Agreement in which Debtor granted GMAC a security
- 13 interest in Debtor's inventory and other collateral. In connection
- 14 with the General Security Agreement, Lee A. Bosch and Mary
- 15 Susan R. Bosch executed a Guaranty in favor of GMAC on
- 16 December 14, 2000.
- 17 j. On July 31, 2006, The Bosch Family Trust dated December 16,
- 18 1994 executed a \$2,261,250.00 Promissory Note in favor of GMAC.
- 20 Debtor guaranteed the Trust's obligations under the Promissory
- 21 Note.
- 22 k. On July 7, 2006, Debtor executed a Loan Agreement in favor of
- 23 GMAC in the amount of \$73,259.08.
- 24 l. On July 7, 2006, Debtor executed a Loan Agreement in favor of
- 25 GMAC in the amount of \$52,644.70.

- m. On August 16, 2006, Debtor entered into a Security Agreement in favor of GMAC granting GMAC a security interest in all of Debtor's assets, including Debtor's vehicle inventory.
- n. On August 18, 2006, Debtor, as guarantor, The Bosch Family Trust dated December 16, 1994, as borrower, Herbert L. Bosch, Jr., as individual guarantor, Lee A. Bosch, as individual guarantor, and Susan R. Bosch, as individual guarantor, entered into a Cross Default and Personal Property Cross-Collateralization Agreement.

11 The foregoing Agreements are collectively referred to as the "Loan and Security
12 Agreements".

13 E. Out of Trust Sales. Prior to the Petition Date, Debtor sold 28 vehicles "out
14 of trust". That is, Debtor failed to timely transfer the sales proceeds to GMAC pursuant
15 to the terms of the Wholesale Agreement and Wholesale Security Agreement, as
16 amended and referenced in Paragraph D above ("Wholesale Plan"). Debtor believes
17 the balance owing to GMAC on the out of trust sales as of January 29, 2009 is
18 approximately \$692,568.27 (the "Out of Trust Balance"), and Debtor and GMAC are
19 conferring to determine this balance.
20

21 F. Post-Petition Interest and Insurance Charges. Pursuant to GMAC's
22 Wholesale Plan, Debtor is obligated to pay monthly interest and insurance charges to
23 GMAC. Debtor failed to make any interest or insurance charges after the Petition Date.
24 The amount owing for post-petition interest and insurance charges as of December 31,
25 2008 is \$63,538.81 (the "Post-Petition Interest and Insurance Balance").
26

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2 G. Floor Plan Amount. The Floor Plan Amount is the balance owed to GMAC
3 for financing of the Floored Vehicles.
4

5 H. GMAC's Security and Prepetition Collateral. The Prepetition
6 Indebtedness is secured by the Loan and Security Agreements and UCC-1 Financing
7 Statements filed with the Nevada Secretary of State, granting GMAC a first priority
8 security interest in and to substantial of all of the assets of the Debtor. The UCC-1
9 Financing Statements include:
10

- 11 a. an initial financing statement dated April 14, 1994 and related
12 amendments and continuations thereto.
13 b. an initial financing statement dated September 15, 1994 and
14 amendments and continuations related thereto.
15 c. an initial financing statement dated December 22, 2000 and a
16 continuation and amendment related thereto.
17 d. an initial financing statement dated September 13, 2006 and an
18 assignment related thereto.
19

20 The Loan and Security Agreements and UCC-1 Financing Statements constitute a first
21 priority encumbrance on all of the Debtor's equipment, machinery, fixtures, inventory,
22 vehicle inventory, deposits, account(s), chattel paper, general intangible(s), computer
23 equipment, and all other personal property, including proceeds and products of each
24 (the "Prepetition Collateral"). The financing statements referenced above are
25 collectively referred to as the "Financing Statements".
26

27 I. The Prepetition Collateral includes new and used vehicles subject to
28 GMAC's floor plan financing agreement the ("Floored Vehicles"). The Floored Vehicles
29

1 consist of new vehicles which are eligible for return to General Motors pursuant to NRS
 2 Chapter 482 (the "New Floored Vehicles") and new and used vehicles which are not
 3 eligible for return to General Motors pursuant to NRS Chapter 482 (the "Used Floored
 4 Vehicles").

5
 6 J. The Prepetition Collateral also includes Debtor's used vehicle inventory in
 7 which GMAC holds a perfected first priority security interest, but which are not Floored
 8 Vehicles (the "Non-Floored Vehicles"). GMAC's Prepetition Collateral also includes a
 9 first priority security interest in Debtor's open account with General Motors (the "Open
 10 Account"). As of January 29, 2009, the balance of the Open Account is in the minimum
 11 amount of approximately \$152,000.

12
 13 K. Need for and Uses of Cash Collateral. As a result of GMAC's liens upon,
 14 and security interests in, the Prepetition Collateral, and by virtue of Bankruptcy Code
 15 section 363(c)(2), the Debtor is unable to use the "Cash Collateral" (as such term is
 16 defined below) without the consent of GMAC or the authorization of the Court after
 17 notice and a hearing. The Debtor has an immediate need for the use of Cash Collateral
 18 for the preservation of the bankruptcy estate and the maintenance and continued
 19 operation of its business to pay employees, suppliers, current debt service to GMAC,
 20 and other trade creditors on a current post petition basis for Debtor's ordinary course of
 21 business day to day operations.

22
 23 **AUTHORIZATION TO USE OF CASH COLLATERAL**

24
 25 Based upon the foregoing findings and conclusions, and good cause
 26 appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, on an interim basis until a hearing on the JOINT MOTION TO APPROVE COMPROMISE AND SETTLEMENT PURSUANT TO BANKRUPCY RULE 9019 is held to approve the STIPULATED FINAL ORDER RE USE OF CASH COLLATERAL AND GRANTING OF REPLACEMENT LIEN; AND RE MOTION FOR RELIEF FROM AUTOMATIC STAY AND SECOND MOTION FOR RELIEF FROM AUTOMATIC STAY, as follows:

1. Incorporation. The Recitals contained above are incorporated herein by this reference.

2. Indebtedness. The Debtor hereby acknowledges and agrees that the Debtor is liable to GMAC in the full amount of the Prepetition Indebtedness.

3. Validity of Claims. Subject only to the rights of interested third parties, the Debtor acknowledges and agrees to the following:

3.1 The Prepetition Indebtedness constitutes an allowed claim under the Bankruptcy Code

3.2 The Prepetition Indebtedness is secured by a valid, perfected, and indefeasible, first priority security interest in Prepetition Collateral except as provided below.

4. Rights of Interested Parties. Notwithstanding the provisions above, any interested third party, other than the Debtor shall have the right, pursuant to the provisions of the Bankruptcy Code, to file with the Bankruptcy Court and serve on the Debtor and GMAC any motions, complaints or objections with respect to amount of the Prepetition Indebtedness, the extent, validity or priority of GMAC's security interest in the Prepetition Collateral, or against GMAC (including, without limitation, any claims of

1 the estate under sections 510, 541, 544, 547, 548, 549, 550, or 553 of the Bankruptcy
 2 Code). Any such claims, causes of actions or objections shall set forth the legal and
 3 factual basis therefore.

4 a. Collection and Use of Cash Collateral: DIP Account. For
 5 purposes of this Order, "Cash Collateral" includes, without limitation, available cash,
 6 negotiable instruments, documents of title, securities, chattel paper, deposit accounts,
 7 or other cash equivalents whenever acquired in which the Debtor has an interest, and
 8 includes any and all proceeds, products, offspring, rents or profits of property and all
 9 fees, charges, accounts or other payments on the Prepetition Collateral or otherwise
 10 generated by or derived from the Prepetition Collateral. Effective on the Court's Entry of
 11 this Order (the "Approval Date"), and subject to the provisions this Order, GMAC
 12 consents to the use by the Debtor of the Cash Collateral *nunc pro tunc* to the Petition
 13 Date for the payment of Debtor's payroll and all related taxes, GMAC debt service, U.S.
 14 Trustee fees, Debtor's post petition legal and professional fees (as approved by the
 15 Court), and other ordinary and necessary business expenses for Debtor's operations.

16 5. Adequate Protection to GMAC. As adequate protection for the expected
 17 diminution in value of the interests of GMAC, in compliance with section 506(b) of the
 18 Bankruptcy Code, and in consideration of consent to the Debtor's use of the Cash
 19 Collateral as set forth in this Stipulation (a) GMAC is hereby granted a replacement lien
 20 (the "Postpetition Lien") and on each and all of the Debtor's Postpetition assets,
 21 including, but not limited to, the Open Account, rents, accounts, inventory, vehicle
 22 inventory, general intangibles, documents, instruments, equipment, payment
 23 intangibles, fixtures, investment property, all deposit accounts with any bank or financial
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1 institution and the contents thereof, and all cash and other property deposited therein,
 2 all books, records, ledger cards (collectively, the "Postpetition Collateral") and any and
 3 all proceeds of such Postpetition Collateral, with such Postpetition Lien being a
 4 perfected security interest in and to the Postpetition Collateral having the same extent,
 5 validity and priority as GMAC had in the Prepetition Collateral on the Petition Date;
 6 provided, however, that the Postpetition Lien and Postpetition Collateral shall exclude
 7 any causes of action, claims, recoveries, or rights of the Debtor's bankruptcy estate
 8 under Chapter 5 of Title 11 and specifically sections 506, 544, 547, 548, 549, 550,
 9 and/or 553 of the Bankruptcy Code, and (b) under section 507(b) of the Bankruptcy
 10 Code, if the protection granted above is insufficient to satisfy in full the claim of GMAC,
 11 GMAC will be granted an allowed claim under section 503(b) of the Bankruptcy Code in
 12 the amount of any such insufficiency. Such claim shall have the priority provided by
 13 section 507(b) of the Bankruptcy Code, and no claim for costs or expenses of
 14 administration that have been or may be incurred in this case, any conversion of this
 15 case to a case under chapter 7 of the Bankruptcy Code, or otherwise, and no priority
 16 claims, are or will be senior to or on a parity with any such claim of GMAC, subject only
 17 to fees payable to the Office of the United States Trustee under 28 U.S.C. § 1930 and
 18 fees or costs owing to the Clerk of the Court.

22 6. No Postpetition Debt; No Other Liens. The Debtor represents that it will not
 23 incur any post-petition indebtedness, whether pursuant to section 364 of the Bankruptcy
 24 Code or otherwise, other than post-petition professional fees and costs, and fees to the
 25 Office of the United States Trustee, and agrees not to seek court approval of any such
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post-petition indebtedness on an ex parte or short notice basis except with prior approval by GMAC.

7. Prepetition Collateral Use Approval. GMAC recognizes that Debtor may have, after the Petition Date, continued to use Cash Collateral to operate its business despite the prohibition of such use. Debtor and GMAC agree that to the extent Debtor used Cash Collateral, Debtor will submit an accounting within 10 days of entry of this Order all Cash Collateral, as well as any and all expenditures made. Debtor agrees retroactively with respect to such expenditures that it shall be under the same obligations, terms and conditions as set forth herein as though previous use of Cash Collateral were made pursuant to this Order.

8. Debtor-in-Possession Accounts. Debtor has opened Debtor-in-Possession accounts in accordance with the guidelines of the United States Trustee. Debtor shall deposit all revenue, rents, cash, income, profit, or other monies obtained in the course of business or otherwise in the Debtor-in-Possession account(s).

9. Reporting. Debtor shall provide GMAC with a monthly report comparing actual to budgeted use of Cash Collateral. Debtor shall also provide by the 20th of each month, commencing January 20, 2009, and monthly thereafter, the following:

9.1 Copies of the Debtor's monthly operating reports submitted to the Office of the United States Trustee;

9.2 Any other financial information reasonably requested by GMAC, including without limitation Debtor's interest in any joint venture, limited liability company or other entity, foreign or domestic.

Debtor shall provide such other information as reasonably requested by GMAC.

1 10. Nunc Pro Tunc. GMAC provides its consent to the use of Cash Collateral
 2 in connection with the bankruptcy filing. Accordingly, the relief granted in the Court's
 3 Order shall be effective as of the Petition Date.

5 11. No Surcharge. Debtor and any successors, excluding any trustee
 6 appointed by the Court, shall not be permitted to surcharge GMAC's
 7 Collateral or the Post-Petition Collateral under Bankruptcy Code §§506(c),
 8 552(a) or otherwise, without GMAC's written consent, which GMAC may
 9 withhold in its sole discretion.

10 12. Termination of Franchise and Return of Floored Vehicles and Parts

11 12.1 Immediately upon entry of this Order, Debtor will take all steps
 12 necessary and appropriate to terminate its franchise with General
 13 Motors and return the New Floored Vehicles to General Motors
 14 pursuant to NRS Chapter 482. After Debtor's termination notice is
 15 given to General Motors, and before General Motors takes delivery of
 16 the New Floored Vehicles (the "Interim Termination Period"), Debtor
 17 may continue to sell the New Floored Vehicles. However, GMAC will
 18 hold titles to the New Floored Vehicles, and Debtor shall not sell any
 19 of the New Floored Vehicles for less than the floor plan amount. The
 20 entire proceeds of sales of New Floored Vehicles during the Interim
 21 Termination Period shall be paid directly to GMAC to reduce the Floor
 22 Plan Amount, with any surplus balance remaining after payment in full
 23 of the Floor Plan Amount to then be applied to those balances
 24 remaining for interest and insurance as set forth in Paragraphs 13.1
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1 and 13.6 below until paid in full, and then to the Out of Trust Balance
 2 until paid in full. The entire proceeds of the compensation due to
 3 Debtor from General Motors for the return of the New Floored
 4 Vehicles shall be paid directly to GMAC to reduce the Floor Plan
 5 Amount.

6
 7 12.2 In connection with the termination of its General Motors franchise,
 8 Debtor will immediately deliver the Used Floored Vehicles to GMAC.
 9 GMAC will liquidate the Used Floored Vehicles and apply the
 10 proceeds to reduce the Floor Plan Amount until the Floor Plan
 11 Amount is paid in full with any remaining surplus balance to be
 12 applied to those balances remaining for interest and insurance as set
 13 forth in Paragraphs 13.1 and 13.6 below until paid in full, and to then
 14 be applied to the Out of Trust Balance until paid in full.
 15

16
 17 12.3 In connection with this termination of its General Motors franchise,
 18 Debtor will return its inventory of parts, accessories, and special tools
 19 to General Motors as set forth in NRS 482.363521. The proceeds of
 20 the return of the parts and accessories shall be placed in Debtor's
 21 Open Account, which proceeds shall then be paid directly from the
 22 Open Account to GMAC to reduce the Out of Trust Balance and the
 23 Floor Plan Amount and the interest and insurance amounts set forth
 24 in Paragraphs 13.1 and 13.6 below.
 25

26 13. Payments to GMAC.

27 13.1 As additional adequate protection of GMAC's interests in the

Collateral, Debtor shall pay the Post-Petition Interest and Insurance
Balance to GMAC no later than April 6, 2009, as provided below.

13.2 As additional adequate protection of GMAC's interests in the Collateral, Debtor shall reduce the sum of the Out of Trust Balance, the Floor Plan Amount, and the interest and insurance amounts set forth in Paragraphs 13.1 and 13.6 herein to a total of \$300,000 no later than April 6, 2009. In the event the proceeds of the return and liquidation of the Floored Vehicles plus the proceeds of the return of the parts and accessories are insufficient to reduce the sum of the Out of Trust Balance and the Floor Plan Amount and the interest and insurance amounts set forth in Paragraphs 13.1 and 13.6 herein to a total of \$300,000, Debtor shall liquidate a sufficient portion of its Non-Floored Vehicles and pay the proceeds of such liquidation directly to GMAC in such an amount as is necessary to reduce the sum of the Out of Trust Balance, the Floor Plan Amount and the interest and insurance amounts set forth in Paragraphs 13.1 and 13.6 herein to a total of \$300,000 within the time limits set forth in this Order.

13.3 As additional adequate protection of GMAC's interests in the Collateral, Debtor shall pay to GMAC monthly debt service, interest and insurance as and when due under the Loan and Security Agreements and the Wholesale Plan, in addition to those amounts otherwise provided in this Order.

13.4 As additional adequate protection, Debtor shall pay \$15,000 to

1 GMAC on the first business day of each month beginning April 1,
 2 2009. Such monthly payments shall be applied to the Out of Trust
 3 Balance, any remaining Floor Plan Amount, and the interest and
 4 insurance amounts as set forth in Paragraphs 13.1 and 13.6 herein
 5 and shall continue until the sum of the Out of Trust Balance, the Floor
 6 Plan Amount, and the interest and insurance amounts as set forth in
 7 Paragraphs 13.1 and 13.6 herein is paid in full.
 8

10 13.5 As additional adequate protection, GMAC shall collect the present
 11 balance, and any future balances, of the Open Account and apply the
 12 proceeds to reduce the Floor Plan Amount until paid in full, and then
 13 to those balances remaining for interest and insurance set forth in
 14 Paragraphs 13.1 and 13.6 below until paid in full, with any remaining
 15 balance to then be applied to the Out of Trust Balance.
 16

17 13.6 As additional adequate security, Debtor shall pay, subject to the
 18 Court's approval, pre-petition interest and insurance charges accrued
 19 under the Wholesale Plan in the amount of \$56,131 to GMAC no later
 20 than April 6, 2009 as provided above.
 21

22 14. No other charges. All terms of the Loan and Security Agreements shall
 23 remain in full force and effect and remain binding, except when inconsistent with an
 24 express provision of this Order.
 25

26 15. Assurances. Debtor shall, after the date of this Order: (a) provide notice
 27 to GMAC as soon as practicable of the occurrence of any Event of Default (hereinafter
 28 defined) or any event known to Debtor or its counsel which, with the passage of time or

1 giving of notice, or both, would constitute an Event of Default; (b) oppose any appeal or
2 other challenge to the Stipulation or to the Court's order approving the Stipulation,
3 including any action taken to amend, modify, or vacate the Stipulation or the Court's
4 Order without GMAC's written consent; and (c) only incur indebtedness reasonably
5 necessary for the operation of Debtor's business.

6
7 16. Events of Default. Debtor's authority to use Cash Collateral pursuant to
8 the Order shall terminate five (5) business days after the occurrence and continuation of
9 any of the following events (unless such event is cured), each of which shall constitute
10 an Event of Default:

11
12 16.1 After entry of this Order Debtor violates any of the material
13 provisions of the Loan and Security Agreements, except for those
14 defaults waived by GMAC;

15 16.2 Debtor's chapter 11 case is converted to a case under chapter 7 of
16 the Bankruptcy Code;

17 16.3 The Court authorizes the appointment of a chapter 11 trustee for
18 Debtor's estate;

19 16.4 Any lien, security interest or priority purported to be created by this
20 Order shall, for any reason, cease to be valid and enforceable in
21 accordance with the original terms of this Order; or subsequent
22 orders are entered by this Court amending, modifying,
23 supplementing, vacating, or staying this Order without the written
24 consent of GMAC;

25 16.5 This Court enters an order:

16.5.1 granting relief from the automatic stay applicable under
Bankruptcy Code §362 to the holder of any security interest
or lien senior or pari passu to GMAC's security interest in or
lien upon any of Debtor's assets without the prior written
consent of GMAC; or

16.5.2 granting any lien or security interest that is senior or pari
passu to any lien held by GMAC in any collateral or any
other assets without the prior written consent of GMAC;

16.6 Debtor files a plan of reorganization which does not incorporate the provisions of this Order.

16.7 Debtor files any motion or takes any action inconsistent with this Order; or

16.8 Debtor defaults in the performance of any of its obligations set forth in this Order.

17. Effect of Default. Upon the occurrence and continuation of any Event of Default past the applicable cure period, such occurrence shall be deemed to be an Event of Default and Debtor's authority to use Cash Collateral shall immediately and automatically terminate, provided, however, that any Event of Default may be waived by written waiver executed by GMAC. Upon the receipt by the Debtor of any such written waiver, Debtor's authority to use Cash Collateral shall be retroactively reinstated as if no Event of Default had occurred.

17.1 In the event of Debtor defaults on its obligation to provide payment to GMAC of the monthly debt service as and when due under the

Loan and Security Agreements, including interest on the outstanding principal balance of the GMAC loans or other adequate protection payments ordered by the Court ("Payment Default"), GMAC or its counsel may send a Notice of Default by electronic mail, facsimile copy, U.S. Mail or hand-delivery to Debtor's counsel.

17.2 If Debtor fails to cure the Payment Default within five (5) business days of the date of delivery of such notice, GMAC may, in addition to the remedies set forth above, file a Declaration of Noncompliance, stating under penalty of perjury that the Debtor has failed to make payment(s) and has failed to cure after five (5) business days from the Notice of Default.

17.3 Notwithstanding the foregoing provisions of Paragraphs 16 or 17, if, at any time after entry of this Order Debtor sells a vehicle out of trust, GMAC may immediately submit an ex parte order terminating the automatic stay.

17.4 Notwithstanding the foregoing provisions of Paragraphs 16 or 17, if Debtor fails to timely reduce the Out of Trust Balance, any remaining Floor Plan Amount and the interest and insurance amounts set forth in Paragraphs 13.1 and 13.6 herein to a total of \$300,000 as described in Paragraph 13.2 above, or fails to timely deliver any of the \$15,000 monthly payments described in Paragraph 13.4, GMAC may immediately submit an ex-parte order terminating the automatic stay.

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 2 18. Section 364(e) of the Bankruptcy Code. Having been found to have
 3 acted in good faith in agreeing to the terms of this Stipulation, GMAC shall be entitled to
 4 the full protection of section 363(m) of the Bankruptcy Code with respect to the Debtor's
 5 grant of the Postpetition Liens created and authorized by this Order in the event that this
 6 Order or any authorization contained in this Order is stayed, vacated, reversed, or
 7 modified on appeal. Any stay, modification, reversal, or vacating of this Order will not
 8 affect the validity of any obligation of the Debtor incurred under this Order.
 9

10 19. No Waiver by Any Party. This Order does not prejudice the right of GMAC
 11 to seek relief from the automatic stay of section 362 of the Bankruptcy Code, or any
 12 other relief in this case, including demands for adequate protection, objections and
 13 claims relating to applications or motions for adequate protection, or the use, sale, or
 14 other disposition of the Cash Collateral or the Post-Petition Collateral. Except as
 15 otherwise expressly set forth in this Order, this Order is not a waiver or modification of
 16 any of the rights of GMAC, and GMAC does not have any obligation or duty to any other
 17 entity to exercise of any of its rights, remedies, claims, powers, benefits, and privileges.
 18 Delay in or failure to exercise any of their rights, remedies, claims, powers, benefits, or
 19 privileges does not constitute a waiver, nor subject GMAC to any liability to any entity,
 20 and no other entity may rely upon any delay or failure or in any way seek to assert a
 21 defense to any obligation owing based on any delay or failure.
 22

23 20. Successors and Assigns; Survival. The provisions of this Order shall be
 24 binding upon and inure to the benefit of GMAC and the Debtor and its estate, and the
 25 respective successors and assigns of each of the foregoing.
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1 21. Modification of Order. The terms and conditions set forth in this Order may
 2 not be altered, modified, or affected without the prior written consent of the Debtor and
 3 GMAC. If any or all of the provisions of this Order are hereafter modified, vacated,
 4 terminated, amended or stayed, the authority of Debtor to use Cash Collateral shall
 5 cease immediately thereupon; provided, however, that no such occurrence shall affect,
 6 limit or modify (a) the validity of any claim for any amounts of Cash Collateral used
 7 pursuant to this Order, or (b) the validity, enforceability, priority or perfection of any lien
 8 or security interest granted under this Order, and further provided that GMAC may
 9 determine, in its sole discretion, that any modification of the kind described above is
 10 immaterial and shall not cause consent to the use of Cash Collateral hereunder to
 11 cease.
 12

14 22. No Agreement to Provide Financial Accommodation. No provision of
 15 this Order shall in any way impose upon GMAC any duty or obligation to provide any
 16 financing or financial accommodation to Debtor or any other party, to collect, sell, lease
 17 or otherwise dispose of any of GMAC's collateral, to proceed against any party, person,
 18 individual or entity, to proceed against or exhaust any security held by GMAC, or any
 19 other party, person, individual or entity, or to otherwise pursue any action, right or
 20 remedy in GMAC's power whatsoever. Notwithstanding the foregoing, so long as there
 21 is no Event of Default, GMAC shall not take any action against the non-debtor
 22 guarantors or non-debtor borrowers under the Loan and Security Agreements and
 23 Wholesale Plan to enforce or collect any amounts due under such documents, and shall
 24 stay any further action in that case entitled GMAC v. Mary Lou Bosch, et al., Case No.
 25 08-00662 pending in the United States District Court for the District of Nevada
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1 ("Litigation"). Upon any uncured Event of Default, as provided in Paragraphs 16 and 17
 2 above, GMAC may without further advance notice pursue all of its rights and remedies
 3 as to any non-debtor guarantors and non-debtor borrowers, including those in the
 4 Litigation.

5 23. Consent and Mutual Agreement. Whenever any action may be taken
 6 under this Order upon the prior written consent of GMAC or the prior mutual written
 7 agreement of the parties, the action may be taken without any further notice or action or
 8 order of the Bankruptcy Court.

9 24. Neutral Construction. Each of the parties hereto has been involved in the
 10 negotiation, review, and execution of this Order and each has had the opportunity to
 11 receive independent legal advice from attorneys of its choice with respect to the
 12 advisability of making and executing this Order. In the event of any dispute or
 13 controversy regarding this Order, the parties hereto shall be considered to be the joint
 14 authors of this Order and no provision of this Order shall be interpreted against a party
 15 hereto because of authorship.

16 25. Headings. The parties acknowledge that the headings set forth herein are
 17 for convenience only and shall not be used to limit, define, or interpret the rights and
 18 responsibilities of the parties hereunder.

19 26. Power of Representatives. Any party executing this Order in a
 20 representative capacity warrants that he or she is duly authorized and empowered to do
 21 so.

22 27. Survival of Obligations. The provisions of this Order and any actions taken
 23 in accordance with this Order survive entry of any order that may be entered: (a)

1 confirming any plan in any case of any Debtor; (b) converting this Chapter 11 case to a
2 case under Chapter 7 of the Bankruptcy Code; or (c) dismissing this case. Unless
3 otherwise ordered by the Bankruptcy Court, the claims and liens on the Cash Collateral
4 and the Postpetition Collateral continue in full force and effect and maintain their priority
5 until all the obligations owed under the terms of the Loan and Security Agreements and
6 this Order are paid in full.
7

8 28. Binding Effect. This Order is binding on and inures to the benefit of the
9 Debtor, its estate, any representative of the Debtor or its estate, any Trustee appointed
10 in this case, whether under Chapter 11 or Chapter 7, any Examiner with expanded or
11 special powers to operate the Debtor's business appointed in this case, GMAC, and
12 their respective successors and assigns.
13

14 Dated: February 5TH, 2009
15

16 JOLLEY URGA WIRTH WOODBURY
17 & STANDISH
18 
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